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UNITED STATES BANKRUPTCY COURT

SOUTHERN DISTRICT OF NEW YORK

Case No. 10-12280-alg

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In the Matter of:

2300 XTRA WHOLESALERS, INC.,

Debtor.

- - - - -x

U.S. Bankruptcy Court

One Bowling Green

New York, New York

August 5, 2010

2:49 PM

B E F O R E:

HON. ALLAN L. GROPPER

U.S. BANKRUPTCY JUDGE

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Initial Case Conference

Amended Motion Filed by Condal Distributors, Inc. and Condal Imports, Inc. for an Order Granting Relief from the Automatic Stay

Opposition Filed by Debtor to Amended Motion by Condal Distributors, Inc. and Condal Imports, Inc. for an Order Terminating the Automatic Stay and Related Relief

Transcribed by: Dena Page

1 A P P E A R A N C E S :

2 GOLDBERG WEPRIN FINKEL GOLDSTEIN LLP

3 Attorneys for Debtor

4 1501 Broadway

5 New York, NY 10036

6

7 BY: NEAL M. ROSENBLOOM, ESQ.

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9

10 LAW OFFICES OF JOSEPH A. ALTMAN, P.C.

11 Attorneys for Condal Distributors and Condal Imports

12 951 Bruckner Boulevard

13 1st Floor

14 Bronx, NY 10459

15

16 BY: JOSEPH A. ALTMAN, ESQ.

17

18

19 HOFFMAN POLLAND & FURMAN, PLLC

20 Attorneys for Bogopa

21 220 East 42nd Street

22 Suite 435

23 New York, NY 10017

24

25 BY: JONATHAN S. HOFFMAN, ESQ.

1 P R O C E E D I N G S

2 THE COURT: All right, 2300 XTRA. May I have
3 appearances?

4 MR. ROSENBLOOM: Neal M. Rosenbloom, Goldberg Weprin
5 Finkel Goldstein, attorneys for the debtors.

6 MR. ALTMAN: On behalf of Condal, Joseph A. Altman.

7 THE COURT: All right, one of the --

8 MR. ROSENBLOOM: Your Honor --

9 THE COURT: -- purposes of this hearing was for me to
10 issue a decision on the pending motions of the landlord. Let
11 me just ask you before proceeding to that, are there any
12 developments that the parties wish to bring to my attention. I
13 have the correspondence relating to the alleged changing of
14 keys and Mr. Rosenbloom's letter and the response from the
15 landlord that basically the allegations are in error, as my
16 client has confirmed that it never changed the locks after the
17 debtor obtained possession. So I don't know that it matters,
18 but that's where the landlord says things stand, as I
19 understand it, Mr. Altman.

20 MR. ALTMAN: That is correct, Your Honor.

21 THE COURT: All right.

22 MR. ROSENBLOOM: Your Honor, by way of developments,
23 after the hearing on the 21st, we communicated with counsel for
24 the landlord, provided them with numerous dates when we would
25 be available to meet that next week to try to reach some kind

1 of a reconciliation or accord. We were advised by counsel that
2 the landlord had no interest in meeting with us whatsoever
3 under any circumstances.

4 We also, Your Honor -- as I had advised Your Honor
5 previously, we had entered into a contract with Bogopa Service
6 Corp. to buy the debtor's assets and to obtain an assignment of
7 the lease in consideration of the sum of two and a half million
8 dollars. To my left is Jonathan Hoffman who is a partner with
9 Hoffman Polland & Furman, counsel for Bogopa. They have
10 provided us with Bogopa's audited financial statement for the
11 year ending December 31, 2009. We're prepared to share that
12 with counsel under, of course, a confidentiality agreement.

13 Bogopa is a privately-held corporation. It consists
14 of, among other things, seventeen supermarkets and --

15 THE COURT: Well, we don't get there until I decide
16 the current motions.

17 MR. ROSENBLOOM: That's --

18 THE COURT: So perhaps I need to do that first, and
19 then we can -- if I don't grant them, then we can take up -- I
20 gather you want to move to assume and assign the lease --

21 MR. ROSENBLOOM: Correct, Your Honor, and --

22 THE COURT: -- as well as the personalty, but
23 personalty, perhaps, may be less important than the lease, than
24 the assumption and assignment of the lease.

25 MR. ROSENBLOOM: Clearly. And we have -- in

1 accordance with Your Honor's instructions, we did notice up a
2 proposed sale, which we did not make subject to higher and
3 better bids because the purchase price is more than sufficient
4 to pay all creditors in full. We've obtained a date for that
5 hearing, which is the 31st of August. We also brought on a
6 separate motion for prophylactic purposes to extend the time to
7 assume or reject the lease, and that motion is returnable, I
8 believe, the 19th. We were advised that Your Honor's going to
9 be away, I believe, the week of the 23rd, so we could not --

10 THE COURT: Well, we don't get to any of them --

11 MR. ROSENBLOOM: We don't get to any of that unless --

12 THE COURT: -- if I grant the landlord's motions. So
13 why don't we -- shall we proceed to that? I gather there are
14 no developments at all on the landlord/tenant front.

15 As I understand it, the removal proceedings are in a
16 procedural morass. Somewhere in the district court, before a
17 district judge or before a magistrate, and with briefing
18 extending into the next millennium, or at least until the end
19 of the month.

20 MR. ROSENBLOOM: Correct.

21 THE COURT: That certainly doesn't clarify things, at
22 least as far as I'm concerned.

23 MR. ROSENBLOOM: Correct, Your Honor. There was an
24 order that was signed by Judge --

25 THE COURT: Gardephe.

1 MR. ROSENBLOOM: Right. Your Honor saw that order?

2 THE COURT: I saw that order, yes.

3 MR. ROSENBLOOM: Fine.

4 THE COURT: As I understood the procedures, motions to
5 remand are supposed to be -- where the bankruptcy is in the
6 Southern District of New York, motions are supposed to be
7 automatically referred to the bankruptcy court for at least
8 immediate disposition. It can be appealed to the district
9 court. The statute, of course, says district court has
10 jurisdiction. Statute says district court has jurisdiction
11 over everything. On the other hand, it's not always done, and
12 it's up to the district court to handle its own docket, and I'm
13 certainly going to be the last person to tell the district
14 court what to do. I've already stated that I believe that that
15 case was improvidently removed. But so be it. Just
16 complicates things, as I think you'll understand, if I get to
17 my decision. Why don't I get to my decision?

18 MR. ROSENBLOOM: Does Your Honor want to hear anything
19 further from the parties on this matter?

20 THE COURT: Go ahead. Any -- in terms of argument?

21 MR. ROSENBLOOM: Yes.

22 THE COURT: No. I've -- the parties have briefed the
23 issues. Unless there's anything further you wish to bring to
24 my attention. Mr. Altman reargued the matter in his remand
25 papers, and I read those as well. And you certainly argued the

1 matter, Mr. Rosenbloom. I think I understand the issues. At
2 least I hope I understand the issues, and if I haven't, there
3 are at least three levels of appeal to tell me where I've
4 erred.

5 MR. ALTMAN: I did -- well --

6 THE COURT: Yes, sir?

7 MR. ALTMAN: Just to note for the record that I did
8 not receive the July, nor the August payment. When I spoke to
9 counsel, I indicated to him that my client was just waiting for
10 the Court's decision, and that the July payment was due and
11 then with respect to the August one, as well.

12 THE COURT: Mr. Rosenbloom?

13 MR. ROSENBLOOM: When we were last here, Your Honor --

14 THE COURT: This is -- bankruptcy is not an option.

15 MR. ROSENBLOOM: No, no, no. I have the check.

16 THE COURT: Hand it over.

17 MR. ROSENBLOOM: We were supposed to tender this when
18 we met, Your Honor. I do have the check.

19 THE COURT: Hand it over. All right. That's for
20 July?

21 MR. ROSENBLOOM: Yes, sir.

22 THE COURT: Or July and August?

23 MR. ALTMAN: Just July.

24 MR. ROSENBLOOM: No, that is July, Your Honor.

25 THE COURT: Well, August -- we're past August -- I

1 assume this lease, like every other lease, provides for payment
2 in advance.

3 MR. ROSENBLOOM: On the 1st, with a ten-day grace --

4 THE COURT: On the 1st of the month.

5 MR. ROSENBLOOM: -- with a ten-day grace period.

6 THE COURT: All right, I suppose if you are going to
7 be evicted forthwith after my decision, there might be some
8 reluctance to pay the rent.

9 As I assume the parties may know, there's a lot of
10 very expensive litigation out there on the question of stub
11 rent and liability for stub rent under 365(d)(3). I wrote an
12 opinion giving my views on that issue and hoping it would be
13 appealed so that we'd get a decision from the Second Circuit,
14 and parties wouldn't have to fight over it, at least in this
15 circuit. But, alas, no one appealed. Everyone settled the
16 issue. So that's unknown.

17 So we'll leave the August rent aside for the moment.
18 Certainly, if there are any further proceedings later in the
19 month, I'll expect the August month rent to be paid.

20 MR. ROSENBLOOM: Clearly.

21 THE COURT: Anything further?

22 MR. ROSENBLOOM: I just wanted to point out to the
23 Court that our client relies, of course, on the provisions of
24 749 of the Real Property Actions and Proceedings law.

25 THE COURT: I didn't bring it up, but yes, I have my

1 volume of it downstairs. Brings back memories of many years
2 ago when I went into landlord/tenant court, too.

3 MR. ROSENBLOOM: And I believe, Your Honor, that that
4 statute really does not distinguish, whatsoever, as between the
5 termination of holdover proceedings or nonpayment proceedings.

6 THE COURT: Well, now, that's been argued before.
7 Parties have arg -- I understand the argument.

8 Anything further?

9 All right, let me get to my decision.

10 2300 XTRA Wholesalers, Inc. (the Debtor) filed a
11 voluntary petition for relief under Chapter 11 of the
12 Bankruptcy Code on April 29, 2010. Condal Distributors, Inc.
13 and Condal Imports, Inc., collectively, the landlord, the
14 owners of a single-story commercial building located at 2300
15 Randall Avenue, Bronx, New York (the premises) move for an
16 order determining that under Bankruptcy Code Section
17 362(b)(10), the automatic stay does not apply to the debtor's
18 real property lease of the premises (the lease), or in the
19 alternative, for an order modifying the automatic stay pursuant
20 to Bankruptcy Code Section 362(d)(1) and (2) to permit the
21 landlord to exercise his state law remedies with respect to the
22 lease and evict the tenant.

23 Background. The landlord and debtor entered into the
24 lease in April 1992. During February 2008, it appears the
25 debtor attempted to sublet and/or assign the lease to O.J.

1 Resources, Inc. (O.J. Resources). When the landlord objected
2 to the subletting and/or assignment, the debtor commenced a New
3 York State Court proceeding against the landlord seeking a
4 declaration that the debtor could sublet and/or assign the
5 lease (proceeding 1). The Supreme Court, County of Bronx
6 denied the debtor's application seeking a declaration that it
7 could assign or sublet. The landlord alleges the debtor,
8 notwithstanding the terms of the lease and in contravention of
9 the New York Supreme Court's ruling, turned over possession and
10 management of the premises to O.J. Resources pursuant to the
11 terms of a written agreement. In addition, the debtor
12 allegedly defaulted under various other terms and provisions of
13 the lease.

14 On May 23, 2008, the landlord served upon the debtor a
15 five-day notice of default based on alleged monetary and
16 nonmonetary defaults under the lease. In response, the debtor
17 commenced a so-called Yellowstone action against the landlord
18 in New York Supreme Court on or about May 31, 2008.

19 On February 24, 2009, the parties entered into a
20 settlement agreement in connection with the Yellowstone
21 proceeding. The settlement required the debtor to, one, evict
22 O.J. Resources from the premises, two, obtain a certificate of
23 occupancy for the intended use of the premises, three, pay rent
24 when due, and four, cure other defaults under the lease. In
25 addition, as part of the settlement, the debtor agreed to

1 discontinue proceeding 1 with prejudice.

2 Subsequent to the settlement's execution, O.J.
3 Resources was evicted from the premises, but the debtor
4 allegedly defaulted under other terms of the lease and the
5 settlement, including failure to pay rent when due. The
6 landlord served a ten-day notice of termination under which the
7 landlord claims the lease terminated on September 10, 2009.
8 The debtor refused to vacate the premises and on September 11,
9 2009, the landlord commenced a holdover proceeding in civil
10 court against the debtor.

11 On April 26, 2010, a trial on the merits was held
12 before Judge Arthur F. Engoron in the civil court of the City
13 of New York. After trial, Judge Engoron rendered an oral
14 decision on the record and issued a final judgment of
15 possession and monetary damages in the amount of 238,329
16 dollars against the debtor on April 26, 2010.

17 The landlord purported to serve notice of entry on the
18 debtor on May 1, 2010, but this was several days after the
19 debtor had filed its Chapter 11 petition. The landlord did not
20 and has not obtained a warrant of eviction under New York law.

21 The debtor has not appealed from the state court
22 judgment of possession and asserts its time to do so has not
23 expired because it has not received valid notice of entry.

24 The debtor did remove the state court action to the
25 district court pursuant to 28 U.S.C. Section 1452 and

1 proceedings to remand are pending in the district court.

2 Discussion. The principal issues for determination
3 are, one, whether under Bankruptcy Code Section 362(b)(10) the
4 debtor's lease terminated by expiration of the stated term of
5 the lease before the commencement of the filing of the petition
6 so as to preclude the debtor from obtaining stay relief
7 automatically under the Bankruptcy Code in this court, and two,
8 whether cause exists under Bankruptcy Code Section 362(d) to
9 lift the automatic stay.

10 1. Expiration of the Lease. Section 362(b)(10)
11 excludes from the protection of the automatic stay of Section
12 362(a) of the Bankruptcy Code "any act by a lessor to the
13 debtor under a lease of nonresidential real property that is
14 terminated by the expiration of the stated term of the lease
15 before the commencement of or during a case under this title to
16 obtain possession of such property." Whether a lease is
17 terminated is to be resolved by referenced applicable
18 nonbankruptcy state law. See In re: Policy Realty Corp., 242
19 B.R. 128 (S.D.N.Y. 1999). Landlord relies on In re: Policy
20 Realty, arguing that the debtor's lease was terminated prior to
21 the date of the petition by virtue of the debtor's defaults
22 under the settlement and the passage of the ten-day notice
23 period. Although In re: Policy Realty dealt with the question
24 whether a lease terminated prepetition, there was no issue in
25 that case of the tenant's right to appeal or otherwise seek

1 review in the state court system. It is settled that the
2 automatic stay remains in effect when the debtor has the
3 opportunity to appeal a state court decision or otherwise seek
4 review thereof. See *In re: Stoltz*, 197 F.3d 625, 630 (2d Cir.
5 1999) citing *Robinson v. Chicago Housing Authority*, 54 F.3d
6 316, 321 (7th Cir. 1995). See also *P.J. Clarke's Restaurant*
7 *Corp.*, 265 B.R. 392, 398-99 (Bankr. S.D.N.Y. 2001). The
8 landlord also relies on *In re: Lady Liberty Tavern Corp.*, 94
9 B.R. 812 (S.D.N.Y. 1988) for the proposition that the tenant
10 has no rights, but the landlord ignores the fact that the
11 Court, while finding a state court decision on lease
12 termination binding, left open the possibility that a motion to
13 vacate the default judgment could be brought in state court and
14 left that issue to be determined by the bankruptcy court on
15 remand, 94 B.R. at 817, note 3.

16 In this case, the debtor has not appealed, but it
17 appears from the record that its time to do so has not lapsed.
18 Under New York law, "an appeal, as of right, must be taken
19 within thirty days after service by a party upon the appellate
20 of a copy of the judgment or order appealed from and written
21 notice of its entry." See P.L.R. 5513(a). While the landlord
22 purported to serve the debtor with notice of entry of the state
23 court judgment of possession, it did so on May 1, 2001 after
24 the debtor filed its Chapter 11 petition. It is well-settled
25 that actions taken in violation of the stay are void and

1 without effect. See E.G. Kalb v. Feuerstein 308 U.S. 433
2 (1940), In re: 48th Street Steakhouse, Inc., 835 F.2d 427 (2d
3 Cir. 1987). The debtor has not yet been served with valid
4 notice of entry of the state court judgment, and its time to
5 appeal under New York law has not begun to run.

6 Although the debtor's time to appeal has not expired,
7 at least as shown on this record, it is well-established that
8 tenant's ability to stave off an eviction by virtue of a
9 bankruptcy filing is not unlimited. The courts have held that
10 the stay remains in effect to permit the debtor to permit the
11 state court remedies -- to pursue its state court remedies, but
12 only if "bona fide litigation is pending in the state court (or
13 may with a reasonable likelihood of success be brought there)."
14 In re: Eclair Bakery, 255 B.R. 121, 138 (Bankr. S.D.N.Y.
15 2000).

16 In this case the tenant has made a sufficient showing
17 of its ability as a consequence of what appears to be a serious
18 contract to sell the lease to cure all arrears. Whether this
19 is enough to obtain vacatur of the judgment of possession is a
20 matter for the state courts. The landlord insists that the
21 debtor cannot cure because the debtor, here, breached a
22 conditional limitation in the lease. It is unclear from the
23 civil courts oral opinion exactly why the court held for the
24 landlord, but it is clear that the state court didn't refer to
25 conditional limitations, and in any event, the issue is one for

1 the state court system.

2 The landlord argues that all of the cases relating to
3 stays after a bankruptcy filing are nonpayment rather than
4 holdover proceedings and that there is a critical distinction.
5 But this is not so. The eviction proceedings in P.J. Clarke's,
6 which was my case, were commenced and prosecuted as a holdover
7 for breach of a conditional limitation. The breach was
8 nonpayment of rent, but the landlord there had cleverly made
9 nonpayment of rent a breach of a conditional limitation, and
10 therefore, was able to argue that it wiped out the tenant's
11 rights by virtue of the tenant's failure to pay rent on its
12 claim of the right of setoff. In any event, P.J. Clarke's
13 contains a much more thorough discussion of these issues. I
14 believe it to be directly on point and the parties are referred
15 thereto.

16 The lease has apparently not terminated within the
17 meaning of Section 365(b)(10) for the separate reason that the
18 landlord did not obtain a warrant of eviction. It appears
19 well-established under New York law that "a lease is not
20 cancelled by the issuance of a notice of petition in a summary
21 proceeding, nor even by the entry of a judgment therein, nor
22 even by the execution of the warrant. It is the issuance of
23 the warrant that effects the cancellation." See Rasch's
24 "Landlord and Tenant including Summary Proceedings," Section
25 46: 18, 4th ed. (1998), internal citations omitted. See also

1 RPAPL Section 749(3), 105 Franklin Street Court v. Serotoff,
2 284 A.D. 262, 131 (N.Y.Sup. 2d 257), first department (1994)
3 affirmed 308 N.Y. 1025, 127 N.E. 2d 865 (1995) where the court
4 said, "The final order and summary proceedings does not
5 terminate the relationship of landlord and tenant. And the
6 point of termination occurs upon the issuance of the warrant
7 which gives possession to the landlord." The landlord cites
8 no authority under New York law for its proposition that the
9 issuance of a warrant of eviction isn't irrelevancy in a
10 holdover as opposed to a nonpayment case. Section 749(3) of
11 the Real Property Actions and Proceedings Law relied on by the
12 landlord does not distinguish between holdover and nonpayment
13 proceedings. It provides, flatly, "The issuing of a warrant
14 for the removal of a tenant cancels the agreement under which
15 the person removed held the premises and annuls the relation of
16 landlord and tenant, but nothing contained herein shall deprive
17 the court of the power to vacate such warrant for good cause
18 shown prior to the execution thereof." The landlord has not
19 obtained a warrant of eviction, and thus the lease did not
20 terminate, under New York law, before the filing of the
21 petition for that additional reason.

22 Accordingly, the Court finds that the nonresidential
23 real property lease is not "terminated by the extension of the
24 stated term of the lease before the commencement of or during a
25 case under this title" within the meaning of Section

1 362(b)(10).

2 2. Relief from the Automatic Stay. Landlord moves
3 for relief from the automatic stay pursuant to Sections
4 362(d)(1) and (2). Section (d)(2)(B) requires the landlord to
5 show that the lease is not necessary for an effective
6 reorganization. Since it appears to be the debtor's sole
7 asset, the landlord cannot make the requisite showing at this
8 stage of the case and has not attempted to do so. See In re:
9 Sweet N Sour 7th Ave Corp., 2010 B.R. Lexis 1836 at *13 (Bankr.
10 S.D.N.Y., June 18, 2010).

11 Section 362(d)(1) permits relief from the automatic
12 stay for cause. The debtor has paid postpetition rent or use
13 and occupancy at the lease rent -- at the least rate. It has
14 produced evidence of a contract to sell the lease to a third
15 party for a sum that would permit cure of all defaults, payment
16 of all unsecured debt, and a substantial return to equity. The
17 landlord has not established that cause exists to terminate the
18 automatic stay at this early stage of the case. See Id. In re:
19 Sweet N Sour 7th Ave Corp.

20 Conclusion. Based on the foregoing, the landlord's
21 motion for an order determining that the automatic stay does
22 not apply and its motion for relief from the stay is denied.
23 The debtor is directed to settle an appropriate order on three
24 days' notice.

25 We should now establish a timetable for the debtor's

1 motion to assume and assign the lease pursuant to the proposed
2 contract of sale. It is also incumbent on the debtor to
3 commence appropriate proceedings to obtain relief under the
4 state law. I do not know how the debtor can do that with the
5 case pending before Judge Gardephe, but I leave that to the
6 parties.

7 So Mr. Rosenbloom, what do you want me to do with
8 regard to your motion -- I gather you have a motion to extend
9 time --

10 MR. ROSENBLOOM: Correct.

11 THE COURT: -- to assume or reject. That is pending
12 on what date?

13 MR. ROSENBLOOM: It's returnable, Your Honor, on the
14 19th at 11 a.m.

15 THE COURT: All right, and you really want a minimal
16 extension because --

17 MR. ROSENBLOOM: Precisely.

18 THE COURT: -- your deadline under the statute, your
19 three months are --

20 MR. ROSENBLOOM: Yes.

21 THE COURT: Well, your four months. When does --

22 MR. ROSENBLOOM: Four months.

23 THE COURT: Four months expires --

24 MR. ROSENBLOOM: On the 27th.

25 THE COURT: -- on the 27th. So let me suggest this.

1 I can hear you on the 19th. If you're coming back on the 30th
2 or 31st --

3 MR. ROSENBLOOM: I believe it's the 31st. And in my
4 motion, I specifically asked --

5 THE COURT: 31st.

6 MR. ROSENBLOOM: -- that it be carried over until
7 then.

8 THE COURT: The landlord -- obviously, counsel needs a
9 chance to consult with its client. Landlord needs an
10 opportunity to consider where things stand. The parties can,
11 of course, agree to -- we're talking, Mr. Altman, about the
12 four-month period under 365(d)(3) of the Bankruptcy Code that
13 limits a debtor -- debtor's initial period of time to assume or
14 reject a nonresidential real property lease to four months from
15 the petition date. The Court can extend that time once for up
16 to three months for cause shown. After that, the Court cannot
17 extend the time. That was one of the statutory amendments that
18 the landlords obtained in a recent amendment to the Bankruptcy
19 Code. Parties can agree to put off the date so they don't have
20 to come back multiple times. The parties can obviously, by
21 written stipulation, even agree to put off the seven-month
22 period. But that can only be done with the landlord's written
23 consent. I don't want to have the parties have to come back
24 here more times than they need to, but you can consider where
25 you wish to go with regard to that hearing. Perhaps that

1 hearing would be useful in connection with the landlord's
2 motion to assume and assign the lease.

3 Now, in order to assume and assign the lease under the
4 Bankruptcy Code, the tenant has to show that the landlord has
5 adequate assurance of future performance. One way of doing
6 that is to show the financials of the proposed assignee, give
7 the landlord an opportunity to examine into the issues relating
8 to the assumption and to hold a hearing and a trial if
9 necessary. Now, there is authority in the bankruptcy cases
10 that with a warrant of eviction outstanding, the debtor doesn't
11 have a sufficient interest in the lease to assume and assign
12 it. I assume the parties can argue just as well that you
13 really can't assume and assign it with a state court judgment
14 outstanding, and I've said in my decision, you've got to go
15 back to state court and get that judgment vacated if the
16 landlord will agree to any resolution, here. It seems to me
17 that I can proceed with the assumption and assignment
18 proceedings here, subject to appropriate proceedings in the
19 state court. The proceedings here could be held pending state
20 court proceedings. Clearly, your contract, it would seem to
21 me, would be relevant when you go back to the state court, and
22 if you want a trial on whether or not the assignee is a
23 reasonable tenant and the landlord would have adequate
24 assurance of future performance, I'll give you one. If you
25 want to come back the last week of August for any kind of a

1 hearing, I'll be here. But most lawyers who have any sense
2 take off sometime at the end of August, and I don't want to
3 interfere with anybody's vacation because I happen to be here.

4 So I really -- I think, perhaps, what we should do is
5 end the hearing today, give the parties an opportunity to
6 consider where they are. We have a hearing on the 19th if we
7 need one. If we don't, parties can agree to put everything off
8 until, I guess it's the 30th. Perhaps we should have a
9 pretrial on the 19th when the landlord -- if the landlord wants
10 to go forward, or if the parties want -- or either party wants
11 to go forward with the assumption and assignment proceedings,
12 there may be issues relating to the information that the
13 landlord -- that a landlord reasonably requests when
14 considering an assignment or a sublet. I can't assume that the
15 parties will agree on anything in this case. But I can always
16 hope.

17 I realize that landlord/tenant relations are probably
18 as bad as any, but very often, when parties get to bankruptcy
19 court, they find a way to resolve things. I've said this
20 before. I've even had spouses in bankruptcy court who have
21 been fighting each other in state court for many, many years,
22 and the husband -- usually the husband files a bankruptcy
23 petition as a last ditch effort to hold off the spouse. When
24 they get to bankruptcy court, sometimes people are able to
25 bring things together but that's for them. So I guess our --

1 at the moment, I'll just leave things with this being my
2 decision, and we have a hearing on the 19th if we need one. We
3 need a -- parties want to turn that into a telephonic hearing
4 and save themselves -- at least save you a trip down from the
5 Bronx, I'm -- if the parties can agree, I'm certainly not going
6 to stand in the way.

7 All right, thank you very much. I should also thank
8 both parties for excellent papers on this issue.

9 MR. ROSENBLOOM: Your Honor, I have -- we are prepared
10 to share the bulk of our financials with the landlord. We
11 would ask --

12 THE COURT: Maybe that's a start.

13 MR. ROSENBLOOM: We would ask that the landlord, of
14 course, sign a confidentiality agreement.

15 THE COURT: I don't think Mr. Altman can sign that for
16 his client.

17 MR. ROSENBLOOM: Precisely. I --

18 THE COURT: And I'm sure he'll take it up with his
19 client.

20 MR. ROSENBLOOM: Precisely.

21 MR. ALTMAN: That's correct, yes.

22 THE COURT: All right, thank you very much.

23 IN UNISON: Thank you, Your Honor.

24 (Proceedings concluded at 3:26 PM)

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I N D E X

RULINGS

	Page	Line
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Landlord's motion for an	18	22
order determining that		
the automatic stay does		
not apply and its		
motion for relief from		
the stay is denied		

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C E R T I F I C A T I O N

I, Dena Page, certify that the foregoing transcript is a true
and accurate record of the proceedings.

Dena Page

Veritext
200 Old Country Road
Suite 580
Mineola, NY 11501

Date: August 13, 2010